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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,309	01/16/2004	Keith W. Wendte	16952	8331
26637	7590	01/11/2006	EXAMINER	
CNH AMERICA LLC INTELLECTUAL PROPERTY LAW DEPARTMENT 700 STATE STREET RACINE, WI 53404			NOVOSAD, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/759,309	WENDTE ET AL.	
	Examiner	Art Unit	
	Christopher J. Novosad	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 13-18 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 19-21 and 23-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>020904</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

Applicants' election with traverse of the Species I (Figures 1-12), dated 11/03/2005, is acknowledged. The traversal is on the ground(s) that "the only difference between the Species I and Species IV embodiments is that the Species I embodiments includes at least one rear press wheel and the Species IV embodiment requires two press wheels. Clearly the 'at least one press wheel' limitation includes a two press wheel configuration and claim 1 is generic to the single and two press wheel embodiments in Figs. 1-12 and Figs. 16-18, respectively. For at least this reason Applicants believe that the restriction requirement should be at least partially withdrawn." Moreover, in addition to Applicants' argument, it is noted by the Examiner that the specification (page 6, lines 21-23) discloses that the press wheel assembly 35 of Figs. 1-12 "can include one or more press wheels 48 (preferably a pair of press wheels as illustrated in Fig. 16)."

Accordingly, in view of the above-noted grounds, the requirement for election of species is **partially** withdrawn, as requested by Applicants, i.e. it is withdrawn **only as to the requirement between Species I and IV so that these two embodiments will now be considered and grouped together as a single species.**" However, the requirement as to Species I and IV (now grouped together) and the remaining mutually exclusive Species II, III is still deemed proper and is therefore made **FINAL**.

Claims 13-18 and 22 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to non-elected species. In this regard, the examiner is in accord with applicant's statement in the "Remarks" (first page) of the "Response To The Restriction,"

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dated 11/03/05, that “dependent claim 13” is “(for the species III embodiment).” Claims 14-18, which are dependent on claim 13, and claim 22 (directed to the “bell-crank” embodiment), are likewise directed to non-elected species.

An action on Claims 1-12, 19-21 and 23-29 of the elected species follows:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5-12, 19-21 and 23 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, line 1, and claim 21, line 2, the recitations “wherein press wheel assembly” and “the press wheel assembly,” respectively, have no proper antecedent basis. Dependent claims 6-12 are indefinite for the same reason as parent claim 5.

Further, in claim 7, line 2; claim 10, lines 1 and 2; and claim 11, lines 1 and 2, respectively, there is no proper antecedent basis for the recitation of “the rear press wheel assembly.”

Further, in claim 9, line 2, and claim 19, lines 9-10 and 11, respectively, there is no proper antecedent basis for the recitation of “the press wheel” which is interpreted as a single press wheel. However, no single press wheel has been previously recited. The recitation in claim 9 is also inconsistent with parent claim 5 which requires “a pair of press wheels.” In claim 19, lines 9-10 and 11, respectively, “the press wheel” apparently should be --the at least one rear

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press wheel-- which finds proper antecedent basis in the recitation "at least one rear press wheel" in 7 of the claim.

Claims 20-21 and 23 are indefinite for the same reason as parent claim 19 above.

### **Claim Rejections – 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson, Jr., *et al.* (USP 4,423,788, hereinafter, Robinson) in view of either Winterton (USP 5,341,754) or Yoder *et al.* (USP 5,724,903, hereinafter, Yoder).

With respect to claim 1 Robinson discloses a seed planting unit (10) comprising:

a planting unit frame (11) that carries:

i. a seed trench opening assembly (47,48, 51) including a seed trench forming member (47,48,51) operable to create a seed trench in a ground surface;

ii. a seed delivery assembly (55, 52) delivering seeds into the seed trench;

a planting unit support assembly (Fig. 1) including a pair of opposing gauge wheels (62, 67) in mechanical communication with the frame (11),

wherein a vertical displacement of one of the gauge wheels (62, 67) in a first direction produces a biasing force on the other gauge wheel in a direction opposite the vertical displacement.

Claim 1 distinguishes over Robinson in requiring “a seed trench closing assembly operable to close the seed trench” and “at least one rear press wheel in mechanical communication with the gauge wheels, each of which are notoriously conventional features of seed planters. Winterton and Yoder show it to be conventional to use at least one rear press or closing wheel in a seed planter mechanical combination. Note the pair of spaced press wheels (23) in Winterton (Figs. 1 and 2, col. 2, lines 40-41), and the pair of spaced closing wheels 32 in Yoder (Figs. 1, col. 2, line 66 to col. 3, line 3) for insuring the uniform covering and firm contact of the dispensed seed in the furrow with the soil.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a rear press (closing) wheel assembly, as disclosed in either of Winterton or Yoder above, with the seed planter combination of Robinson, Jr. et al. for insuring uniform covering and firm contact of the dispensed seed in the furrow with the soil.

With respect to claim 2, note in Robinson (col. 5, lines 39-42) that “if the gauge wheel 67 is on the soil as before, it and the wheel assembly (62) will both support the frame with the frame *only rising half the height* of the obstacle” (emphasis added).

As to claim 3, Robinson (see the Abstract paragraph, lines 11-14, and col. 2, lines 3-7) teaches that the “vertical movement of one gauge wheel is reciprocated by the opposing gauge wheel,” as called for in the claim.

With regard to claim 4, note in Robinson (Figs. 1, 2 and 5; col. 4, lines 47-51 and col. 5, lines 32-42) that the gauge wheels (62, 67) are connected to the frame 11 via gauge wheel arms (60, 65) that operate reciprocally in response to a vertical translation of one of the gauge wheels (62, 67).

In claim 5, the recitation that the “pair of press wheels ... operate reciprocally in response to a vertical translation of one of the gauge wheels” is purely functional without any structure recited to carry out the recited function. Accordingly, such purely functional recitation fails to distinguish the claim over the combination of references of Robinson in view of either of Winterton or Yoder, as applied above.

With respect to claim 6, note in Robinson (Figs. 1 and 5) that the gauge wheel arms (60, 65) define upper ends (64, 68, respectively) that are connected to a bracket (bar 81, Figs. 5, 6) that pivots (at bolt 87), in response to vertical gauge wheel (62, 67) translation.

Regarding claims 11 and 12, each of the secondary references to Winterton (Fig. 1) or Yoder (Fig. 1) shows a pair of press wheels connected to opposite ends of an axle.

#### ***Allowable Subject Matter***

Dependent claims 7-10 are objected to as being dependent upon rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of the base claim(s) and any intervening claims, and if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 19-21 and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

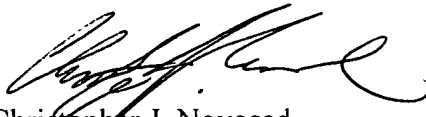
Claims 24-29 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3671

January 9, 2006